



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/172378

PRELIMINARY RECITALS

Pursuant to a petition filed February 29, 2016, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Community Care Inc. in regard to the Wisconsin Partnership Program (WPP), a hearing was held on March 22, 2016, at Milwaukee, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether the agency correctly denied a request for additional day programming.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County who is eligible for the WPP. Community Care is her managed care organization (MCO).
2. Petitioner resides in an adult family home. When she first moved to the home she was approved for day programming because the home did not have sufficient staff to cover petitioner's required health monitoring and supervision. Since that time petitioner's health has stabilized, negating the need for the day programming.

3. Nevertheless the MCO approved once weekly day programming at [REDACTED] to allow petitioner to get out of the home and spend time with others.
4. The adult family home is required by contract to provide recreational activities daily.
5. Petitioner requested a second day of programming at [REDACTED]; the program costs \$70 per day. The MCO notified petitioner that the request was denied on December 23, 2015 because the adult family home already was providing day programming. Petitioner filed a grievance, but the grievance committee upheld the denial by a letter dated February 5, 2016. Petitioner then filed this appeal.

DISCUSSION

The Wisconsin Partnership Program is a demonstration project authorized by the United States Department of Health & Human Services under a waiver of the Social Security Act. See 42 U.S.C. §§ 1396n(a), (b). The project is designed to save money for the federal and state governments by integrating long-term care and acute care services under one roof. In essence, the Department of Health Services will pre-pay a uniform fee per person served by the WPP organization, and the organization will provide all Medicaid and Medicare covered medical services each individual is determined to need. It is also designed to maximize the ability of enrolled members to live in a setting of their own choice, to participate in community life, and to participate in making decisions regarding their own care.

The department, operating under a federal waiver, must provide or arrange for all Medicaid *and* Medicare covered services required by participating recipients, i.e., “members,” including nursing facility, primary, acute, and long-term care services utilizing Medicaid and Medicare certified providers. See 42 U.S.C. §1315. The target group for such members is the “frail elderly” and persons “under 65 years of age with disabilities”. Wisconsin Partnership Program Waiver, Section IV, B, effective January, 1999. The department performs this task by delegating the responsibility of service delivery to a private provider known as the “partnership organization,” also called an MCO.

The WPP members’ rights and the MCO responsibilities are set out in a contract with the Department, found at www.dhs.wisconsin.gov/sites/default/files/legacy/LTCare/StateFedReqs/cy2014mcocontract-amendmnt1.pdf. The appeal process essentially follows that of the Family Care Program under Wis. Admin. Code, §DHS 10.55. See Contract, Article XI, Section H. A WPP member who files a grievance concerning a service can appeal to the Division of Hearings and Appeals if the grievance committee rules against her.

Community Care has the following guidelines for allowing day center attendance: (a) there is a need for supervision when none is available in the adult family home, (b) there is a need for a rehab service, (c) bathing needs cannot be met at home, or (d) the member is socially isolated and has developed mental health issues due to the isolation. See MCO case summary. Thus petitioner was allowed the day programming originally because of the need for supervision. Now that supervision is not necessary the MCO has allowed petitioner to continue once per week day programming. Technically the MCO is failing to file its own guideline but it is evident that the case manager is looking at it in the sense of the fourth situation, to keep petitioner from being isolated.

Based upon the evidence before me I conclude that the MCO correctly denied the additional day programming. While I understand that petitioner desires a second day, the MMCO already has allowed the first day within its discretion. I see no basis for this office to order additional programming that is not medically necessary or even necessary for petitioner to maximize her independence. MCO staff said they would look into other opportunities for out of home activities for petitioner, but I do not see any authority

on my part to simply order the MCO to provide additional programming without a medical or mental health reason.

CONCLUSIONS OF LAW

The MCO correctly denied the additional service requested by petitioner because she already receives similar services at her adult family home.

THEREFORE, it is **ORDERED**

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

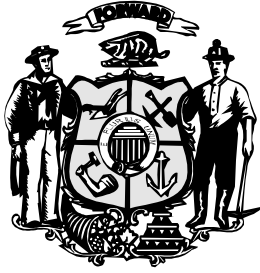
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 30th day of March, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 30, 2016.

Community Care Inc.
Office of Family Care Expansion
Health Care Access and Accountability